

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

GMS INDUSTRIAL SUPPLY, INC..)

Plaintiff,)

v.)

Civil Action No. 2:19-cv-324 (RCY)

G&S SUPPLY, LLC, *et al.*,)

Defendants.)

ORDER

Having weighed the arguments presented by the parties within their Joint Memorandum on the Parties' Continuing Objections to Witnesses, Exhibits, and Discovery Designations (ECF No. 288), the Court rules as follows:

Party Objecting	Exhibit No.	SUBJECT	Ruling
Plaintiff		Jennifer Allen and Cory Allen	Sustained
Defendant	1	Arvest Docs G&S Acct	Withdrawn Exhibit and Withdrawn Objection
Defendant	9	S. Greer Sales Agent Agreement 5.27.15	Withdrawn Objection
Defendant	10	S. Greer Ind. Sales Agent Agreement 5.13.13	Withdrawn Objection
Defendant	15	Hayes Commission Info 7.27.16	Withdrawn Objection
Defendant	17	Internal Marketing Strategy	Withdrawn Exhibit
Defendant	18	GMS Operating Procedures	Withdrawn Exhibit
Defendant	19	GMS Training Materials	Withdrawn Exhibit
Defendant	20	Internal Marketing & Operating Guidelines	Withdrawn Exhibit
Defendant	21	GMS Internal Marketing & Operating Guidelines	Withdrawn Exhibit
Defendant	22	BDO Sheet Showing Greer USB Usage	Under Advisement
Defendant	26	Catalog Comparisons	Withdrawn Exhibit

Defendant	27	GMS Catalog 4.20.19	Withdrawn Exhibit
Defendant	31	GMS Catalog 4.20.19	Withdrawn Exhibit
Defendant	32	Spires 2017 Sales Agent Agreement	Withdrawn Exhibit
Defendant	33	GMS Catalog	Withdrawn Objection
Defendant	37	GMS Catalog 7.20.19	Withdrawn Exhibit
Defendant	38	GMS Catalog 7.20.19-01	Withdrawn Exhibit
Defendant	39	Tech Data Sheet and Videos	Under Advisement
Defendant	42	G&S Catalog (no cover)	Withdrawn Objection
Defendant	43	G&S Catalog	Withdrawn Exhibit
Defendant	46	HMC Corp. Info from Internet Sources 4.10.19	Sustained
Defendant	47	Greer Travel Expenses 2017	Withdrawn Exhibit
Defendant	48	Westly Sales Agreement 4.12.11	Withdrawn Objection
Defendant	49	Westly Non-Compete 4.3.11	Withdrawn Objection
Defendant	50	Westly Sales Agent Agreement 7.2.12	Withdrawn Objection
Defendant	51	G&S Catalog	Withdrawn Exhibit
Defendant	52	Spires Sales Agreement 1.22.13	Withdrawn Objection
Defendant	57	Westly Employment Agreement 11.5.12	Withdrawn Objection
Defendant	59	Service and Survey Forms	Withdrawn Exhibit
Defendant	61	GMS Bilingual Product Labels	Withdrawn Exhibit
Defendant	71	Air Force Ordering Instructions	Withdrawn Exhibit
Defendant	72	GMS Marketing Strategy Email	Withdrawn Exhibit
Defendant	73	GMS Training & Operating Guidelines for DOD Email	Overruled
Defendant	74	Welton Order Showing Confusion 2.26.19	Under Advisement
Defendant	75	Creeper Pictures	Overruled
Defendant	77	Notes from GMS calls with AW 4.19	Under Advisement
Defendant	78	GMS Contractor and Payroll Payments	Withdrawn Exhibit and Withdrawn Objection

Defendant	79	Email JDW to Van Tassel re Shared Customers	Withdrawn Exhibit
Defendant	80	GMS & G&S Kit Comparison Spreadsheet	Withdrawn Exhibit
Defendant	81	Email Shirk to JDW re Computer Folder Names 10.16.20	Overruled
Defendant	85	GSA Contract 7.15	Withdrawn Exhibit
Defendant	86	Email to Westly w. Leavenworth Customer Info 9.12.18	Overruled in part and Sustained in part ¹
Defendant	87	Westly Email re Credit Card Sales 9.16.16	Withdrawn Objection
Defendant	89	RR Email re GSA Price List 8.11.16	Withdrawn Exhibit and Withdrawn Objection
Defendant	91	GMS Welton Commission Reports (2016-19)	Withdrawn Objection
Defendant	92	GMS Hayes Commission Reports	Withdrawn Objection
Defendant	93	GMS Side Commission Reports	Withdrawn Exhibit
Defendant	95	GMS S. Greer Commission Reports (2015-18)	Withdrawn Objection
Defendant	96	GMS S. Greer Commission Reports (2019)	Withdrawn Objection
Defendant	97	GMS Spires Commission Reports	Withdrawn Objection
Defendant	98	GMS Lost Profits (Final)	Overruled
Defendant	99	DK Text w Hayes Offering to Source Shoes 8.9.18	Withdrawn Objection
Defendant	100	Storm Tactical RFQ 7.18.19	Withdrawn Exhibit
Defendant	101	Storm Tactical RFQ 9.11.17	Withdrawn Exhibit
Defendant	103	Email to S Greer's GMS Account re G&S Kits	Under Advisement
Defendant	104	Email to S Greer's GMS Account re G&S Kits 1.30.19	Under Advisement
Defendant	105	Email to Welton's GMS Account re G&S Parts 2.26.19	Under Advisement
Defendant	106	Email to Welton's GMS Account re G&S Parts 2.27.19	Under Advisement
Defendant	107	Email to Spires's GMS Account re G&S Parts 1.17.19	Under Advisement

¹ This exhibit can be used to show knowledge but cannot be used for the truth of the matter asserted.

Defendant	108	Email to Spires's GMS Account re G&S & GMS Parts 1.7.19	Under Advisement
Defendant	109	Email to Spires's GMS Account re G&S Parts 1.29.19	Under Advisement
Defendant	116	Amber Wenrick Re Order	Under Advisement
Defendant	117	Billy Miles Customer Service _ Data Management	Under Advisement
Defendant	121	Mike Welton ORDER DOC NUMBERS	Withdrawn Exhibit
Defendant	122	Mike Welton GMS Motor Pool Order w. G&S kits 2.25.19	Withdrawn Exhibit
Defendant	125	Sabrina Greer Fw Non-Standard Order	Withdrawn Exhibit
Defendant	126	Sky Spires Customer Service _ Data Management	Under Advisement
Defendant	130	GMS CCPN Activity 2015-2020 Final	Sustained
Defendant	132	WT Commission Payments	Withdrawn Exhibit
Defendant	135	W Greer to Welton re chinese multimeter and DLA markup 2.13.20	Withdrawn Exhibit
Defendant	136	Greer to Welton re competitors 1.15.20	Withdrawn Exhibit
Defendant	137	Amber G&S Sales Spreadsheet	Under Advisement
Defendant	138	Amber G&S Sales Spreadsheet 1.25.2019	Withdrawn Exhibit
Defendant	139	Greer to Team_Kit Pricing 01.14.19	Withdrawn Exhibit
Defendant	143	Hayes to Customers re GMS 5.7.19	Withdrawn Objection
Defendant	146	G&S Product Catalog	Withdrawn Objection
Defendant	147	Kennedy Orders Combined 4.3.19	Withdrawn Exhibit
Defendant	156	W Greer to Spires re Sourcing Products 4.27.18	Withdrawn Objection
Defendant	163	W Greer to Welton re Part Shipment 11.2.18	Withdrawn Exhibit
Defendant	176	Invoice from Zoro for G&S Order 6.11.18	Withdrawn Exhibit
Defendant	190	Spires to Customer re GMS Catalogue from G&S Acct. 3.7.18	Withdrawn Objection
Defendant	198	GMS 2018 1099 to Greer Group	Withdrawn Objection
Defendant	205	2019 Side Misc. Income	Withdrawn Exhibit
Defendant	206	2018 G&S Contractor Payments	Withdrawn Objection

Defendant	214	G&S 2018 AMEX Summary	Withdrawn Exhibit
Defendant	216	Miller to Spires Explaining Info for Taxes 3.4.20	Overruled
Defendant	217	2018 Miller Tax Preparation Materials	Overruled
Defendant	218	2019 Miller Tax Preparation Materials	Overruled
Defendant	221	Miller Notes re HMC Expenses	Withdrawn Exhibit
Defendant	233	G&S Sales and GMS Comparison	Sustained
Defendant	234	Comparison of G&S and GMS Products	Under Advisement
Plaintiff	D10.	2020.08.05 Plaintiff GMS Industrial Supply, Inc.'s Responses to Defendant G&S Supply LLC's First Set of Interrogatories	Sustained in Part and Overruled in Part ²
Plaintiff	D11	2020.08.05 Plaintiff GMS Industrial Supply, Inc.'s Responses to Defendant G&S Supply, LLC's First Set of Requests for Production	Sustained in Part and Overruled in Part ³
Plaintiff	D12	2021.01.27 Plaintiff GMS Industrial Supply, Inc.'s First Supplemental Responses to Defendant G&S Supply, LLC's First Set of Interrogatories	Sustained in Part and Overruled in Part
Plaintiff	D13	2021.01.27 Plaintiff GMS Industrial Supply, Inc.'s First Supplemental Responses to Defendant G&S Supply, LLC's First Set of Requests for Production	Sustained in Part and Overruled in Part
Plaintiff	D14	2021.02.18 Plaintiff GMS Industrial Supply, Inc.'s Second Supplemental Responses to Defendant G&S Supply, LLC's First Set of Requests for Production	Sustained in Part and Overruled in Part
Plaintiff	D15	2021.04.23 W. Lascara letter to R. McFarland re: document production (GMS 010679 to 010959)	Sustained
Plaintiff	D16	2021.04.23 Plaintiff GMS Industrial Supply, Inc.'s Supplemental Responses 04.23.21 to Defendant G&S Supply, LLC's First Requests for Production	Sustained in Part and Overruled in Part
Plaintiff	D17	2021.04.30 T. Berkley letter to R. McFarland re: document production (GMS 010960 - 011351)	Sustained
Plaintiff	D18	2021.05.04 Plaintiff GMS Industrial Supply, Inc.'s Second Supplemental Responses to Defendant G&S Supply, LLC's First Set of Requests for Production	Sustained in Part and Overruled in Part

²The statements are admissible but cannot be admitted on court documents. Defendant may create a separate document titled "Admissions of ____" that lists the question(s) and answer(s) of the declarant. The same ruling shall apply to Exhibits D10-D14, D16, and D18.

Plaintiff	D20	2007.12.03 Complaint with exhibits, Gary B. Gorken, G Cubed, Inc., GMS Industrial Supply, Inc., (formerly, Gorkens Maintenance Specialists, Inc.), and Rachel Gorken v. Drummond American Corporation, Civil Action No.: 2:07- cv-560	Sustained in Part and Overruled in Part ⁴
Plaintiff	D21	2020.07.05 Text Messages between W. Greer and G. Gorken	Overruled
Plaintiff	D22	Text messages from G. Gorken to M. Welton	Overruled
Plaintiff	D23	2019.05.03 G. Gorken email to S. Greer re: next time you are looking through your wedding album, try not to cry	Overruled
Plaintiff	D24	G. Gorken notes prepared during the week of 2021.05.10	Withdrawn Objection
Plaintiff	D25	2019.04.02 Text Message between W. Greer and A. Wenrick	Overruled
Plaintiff	D32	2016 HMC Supply LLC Profit or Loss From Business	Overruled
Plaintiff	D34	G&S Supply LLC Profit & Loss January through December 2018	Withdrawn Objection
Plaintiff	D37	2019.05.03 Email Chain between wg@supplygs.com, gssupplyllc@gmail.com, M. Welton, J. Hermann re: Fwd: Meeting follow-up	Under Advisement
Plaintiff	D38	2019.04.08 M. Welton letter to R. Gorken re: return of GMS Property	Under Advisement
Plaintiff	D40	2018.01.01 V: 3c GCSS-Army Transaction Guide	Under Advisement
Plaintiff	D42	GMS Sales according to DIBBS from Jan 1 - Apr, 2019	Overruled
Plaintiff	D45	Drummond Answer and Counterclaim (ECF No. 13), Drummond Am. Corp., 2:07cv560-JBF-FBS	Sustained in Part and Overruled in Part ⁵
Plaintiff	D46	Mike Welton GMS 2019 Commissions	Under Advisement

The Court will take the following exhibits under advisement as the parties have listed them as both resolved and unresolved:

Party Objecting	Exhibit No.	SUBJECT	Ruling
Defendant	23	Greer GMS Access Notification 4.3.19	Under Advisement

⁴ Defendant may use statements in these documents to impeach but cannot mention what the source of the statements. Defendant may not go into the details of the prior litigation.

⁵ Defendant may use statements in these documents to impeach but cannot mention what the source of the statements. Defendant may not go into the details of the prior litigation.

Defendant	60	FedMall Ordering Instructions	Under Advisement
Defendant	64	Standard GCSS Input Instructions	Under Advisement
Defendant	65	Training Emails	Under Advisement
Defendant	123	Sabrina 3RD BN I9 NON-STD REQs	Under Advisement
Plaintiff	D35	2020.01.02 G. Spires Emails to K. Miller re: Numbers	Under Advisement

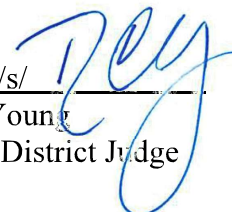
The Court will take the following exhibits under advisement as the exhibits appear on neither the resolved nor the unresolved objections lists:

Party Objecting	Exhibit No.	SUBJECT	Ruling
Defendant	28	2017 S Greer Ind. Sales Agent Agreement	Under Advisement
Defendant	40	NALCOMIS Ordering Instruction Guide	Under Advisement
Defendant	45	HMC Corporate information	Under Advisement
Defendant	131	CCPN Awarded Log as of 7.24.2019	Under Advisement
Defendant	165	W Greer to Welton re G&S Sale 9.25.18	Under Advisement
Defendant	223	G&S Certificate of Reinstatement 9.18.19	Under Advisement

The Court declines to rule on the parties' objections to deposition designations and interrogatory answers pending compliance with the Court's May 20, 2022 Order (ECF No. 283).

Let the Clerk send a copy of this Order to all counsel of record.

It is so ORDERED.

/s/ 
 Roderick C. Young
 United States District Judge

Richmond, Virginia
 Date: May 27, 2022